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| 10/560,374      | 03/29/2007  | Kyu Chan Kwon        | CMT-0034            | 9097             |

23413 7590 11/09/2009  
CANTOR COLBURN, LLP  
20 Church Street  
22nd Floor  
Hartford, CT 06103

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| EXAMINER |
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DEBERRY, REGINA M

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1647

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| NOTIFICATION DATE | DELIVERY MODE |
|-------------------|---------------|

11/09/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptopatentmail@cantorcolburn.com

|                              |                                      |                                    |  |
|------------------------------|--------------------------------------|------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/560,374 | <b>Applicant(s)</b><br>KWON ET AL. |  |
|                              | <b>Examiner</b><br>Regina M. DeBerry | <b>Art Unit</b><br>1647            |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-5,7 and 9-11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,7 and 9-11 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Status of Application, Amendments and/or Claims**

The amendment and Applicant's arguments, filed 25 June 2009, have been entered in full. Claims 6 and 8 are canceled. Claims 1 and 3 are amended. Claims 1-5, 7 and 9-11 are under examination. The translation of foreign priority document Korean application KR 10-2003-0037060, submitted 25 June 2009, has been entered.

### **Claim Rejections - 35 USC § 102(e)**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 7, 9-11 remain rejected under 35 U.S.C. 102(e) as being anticipated by Vukmirovic et al. (WO 2004/006958 A1). The basis for this rejection is set forth at pages 2-3 of the previous Office Action (30 March 2009).

Applicant submits a certified English translation of Korean priority application KR 10-2003-0037060, filed 10 June 2003. Applicant argues that the effective priority date of WO 2004/006958 to Vukmirovic is the PCT filing date of 14 July 2003. Applicant states that Vukmirovic was filed after the effective priority date of the instant application and therefore is not a proper 102(e) reference.

Applicant's arguments have been fully considered but are not deemed persuasive for the following reasons:

The Korean document teaches ***water-soluble inorganic salts*** to include **sodium chloride, calcium chloride, and sodium sulfate**. The amount of ***water-insoluble inorganic salts is preferably 0.001 to 0.7% (w/v)***(page 9, line 21-page 10, line 6). This is in contrast to the instant specification which specifically teaches ***isotonic reagents*** to include **sodium chloride, calcium chloride, sodium sulfate as an** (page 10, lines 1-7 and instant claim 3) with a range of 0.001 to 0.7% (w/v)(instant claim 9).

The Korean document teaches ***isotonic reagents*** to include **mannitol, sorbitol, cyclitol and inositol** and does not appear to have a general disclosure of sugar alcohols. The amount of **sugar alcohol is preferably 0.1 to 1.0% (w/v)**(page 10, lines 19-24). This is in contrast to the instant specification, which specifically teaches ***sugar alcohols*** to include **mannitol, sorbitol, cyclitol and inositol preferably 0.1 to 1.0% (w/v)** (page 9, lines 8-14).

The Korean Document differs from the instant application regarding the definition of what water-soluble inorganic salts encompass and the amount of said water-insoluble inorganic salts (i.e. sodium chloride, calcium chloride, sodium sulfate) and the definition of what isotonic reagents encompass and the amount of said isotonic reagents (i.e. mannitol, sorbitol, cyclitol, inositol).

Applicant cannot rely upon the foreign priority because the invention as claimed in the instant application is not described in foreign priority document Korean application

Art Unit: 1647

KR 10-2003-0037060. The scientific reasoning and evidence as a whole indicates that the rejection should be maintained.

### **Claim Objections**

Claim 4 remains objected to because it depends from a rejected claim. The basis for this rejection is set forth at page 3 of the previous Office Action (30 March 2009).

### ***Conclusion***

Claims 1-3, 5, 7, 9-11 are rejected.

Claim 4 is objected to.

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina M. DeBerry whose telephone number is (571) 272-0882. The examiner can normally be reached on 9:00 a.m.-6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Manjunath N. Rao can be reached on (571) 272-0939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Marianne P. Allen/  
Primary Examiner, Art Unit 1647  
/R. M. D./  
Examiner, Art Unit 1647  
11/4/09